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7 UNITED STATES OF AMERICA,
8 Plaintiff,
9 v.
10 OSCAR BAKER PHILLIPS,
11 Defendant.

Case No.: 12-mj-70988 MAG

DETENTION ORDER

12 On October 22, 2012, the undersigned held a hearing on the government's motion to detain
13 Defendant pursuant to 18 U.S.C. §3142(f) of the Bail Reform Act. Defendant was present at the
14 hearing and was represented by Assistant Federal Defender Ellen Valentik Leonida. The
15 government was represented by Assistant United States Attorney Benjamin Patrick Tolkoff.
16 Pretrial Services Officer Carol K.J. Mendoza was also present.

17 The Court orders Defendant detained pursuant to 18 U.S.C. §3142(e) and (i).

18 **A. Statement Of Reasons For The Detention**

19 The Court orders the defendant's detention because it finds:

- 20 (X) By a preponderance of the evidence that no condition or combination of conditions
21 will reasonably assure the appearance of the defendant as required.
22 (X) By clear and convincing evidence that no condition or combination of conditions will
23 reasonably assure the safety of any other person and the community.

24 **B. Findings Of Fact**

25 The Court's findings are based on the evidence presented in Court and contained in the
26 Pretrial Services Report, and includes the following:

- 27 1. Nature and circumstances of the offense charged:
28 a. The crime is a serious crime and carries a maximum penalty of 40 years.

- 1 b. The offense involves a narcotic drug.
- 2 2. The weight of the evidence against the defendant is high, as a recording device allegedly
- 3 recorded Defendant selling cocaine base on three occasions within 1000 feet of a school.
- 4 3. The history and characteristics of the defendant including:
 - 5 a. General Factors:
 - 6 (X) The defendant has no steady employment. He has been unemployed since 2010.
 - 7 (X) The defendant has no substantial financial resources. He states that he and his
 - 8 wife and four children survive on his wife's unemployment benefits of \$800 a month.
 - 9 (X) Past conduct of the defendant: Defendant has two misdemeanor convictions for
 - 10 inflicting corporal injury on his spouse and wilful cruelty to a child.
 - 11 (X) The defendant has a significant prior criminal record. He has two felony
 - 12 convictions and multiple arrests for selling drugs. Notably, in 2011 he was arrested for selling
 - 13 drugs and twice failed to appear for court proceedings. A bench warrant was issued and he
 - 14 was convicted of a felony.
 - 15 (X) The defendant has a prior record of failures to appear at court proceedings. He
 - 16 has failed to appear for court proceedings five times, and has had his probation revoked five
 - 17 times as well.
 - 18 b) Whether the defendant was on probation, parole, or release by a court:
 - 19 At the time of the current arrest, the defendant was on:
 - 20 (X) Probation in both Alameda County and Sacramento County.
- 21 4. The nature and seriousness of the danger posed by the defendant's release are as follows:
- 22 Defendant poses a danger to the community, as he has sold drugs at least three times near
- 23 a school and has prior similar drug-related convictions, one of which was only a year ago,
- 24 and is a danger to his wife and children, as he has been convicted of inflicting corporal
- 25 injury on his wife and a child.

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1 5. Rebuttable Presumptions

2 In determining that the defendant should be detained, the Court also relied on the
3 following rebuttable presumption(s) contained in 18 U.S.C. § 3142(e), which the court finds the
4 defendant has not rebutted:

5 (X) a. That no condition or combination of conditions will reasonably assure the appearance of
6 the defendant as required and the safety of any other person and the community because
7 the Court finds that the crime involves:

8 () (A) A crime of violence; or

9 () (B) An offense for which the maximum penalty is life imprisonment or death; or

10 (X) C) A controlled substance violation which has a maximum penalty of 10 years or more;
11 or

12 () (D) A felony after the defendant had been convicted of two or more prior offenses
13 described in (A) through (C) above, and the defendant has a prior conviction of one of the
14 crimes mentioned in (A) through (C) above which is less than five years old and which was
15 committed while the defendant was on pretrial release.

16 (X) b. That no condition or combination of conditions will reasonably assure the appearance of
17 the defendant as required and the safety of the community because the Court finds that
18 there is probable cause to believe:

19 (X) (A) That the defendant has committed a controlled substance violation which has a
20 maximum penalty of 10 years or more.

21 () (B) That the defendant has committed an offense under 18 U.S.C. § 924(c) (uses or
22 carries a firearm during and in relation to any crime of violence, including a crime of
23 violence, which provides for an enhanced punishment if committed by the use of a deadly or
24 dangerous weapon or device).

25 () (C) That the defendant has committed an offense after April 30, 2003, involving a minor
26 victim under sections 1201, 1591, 2241, 2242, 2244(a)(1), 2245, 2251, 2251A, 2252(a)(1),
27 2252(a)(2), 2252(a)(3), 2252A(a)(1), 2252A(a)(2), 2252A(a)(3), 2252A(a)(4), 2260, 2421,
28 2422, 2423, or 2425 of Title 18.

In addition, the Court finds that, in light of Defendant's history, Defendant's mother is not alone a viable surety, as her only income is \$750 a month from disability benefits, and she has no assets.

D. Additional Directives

Pursuant to 18 U.S.C. § 3142(i)(2)-(4), the Court directs that:

The defendant be committed to the custody of the Attorney General for confinement in a corrections facility separate, to the extent practicable from persons awaiting or serving sentences or being held in custody pending appeal; and that the defendant be afforded reasonable opportunity for private consultation with his counsel; and that, on order of a court of the United States, or on request of an attorney for the Government, the person in charge of the corrections facility in which the defendant is confined deliver the defendant to a United States Marshal for the purpose of an appearance in connection with a court proceeding.

It is so ORDERED.

Dated: October 22, 2012

Kandis Westmore

KANDIS A. WESTMORE
United States Magistrate Judge